not a new judgment in the sense that it releases land from a lien, simply because the *scire facias* is sued out against the defendant alone and does not include several alienees. *Furst* v. *Overdeer,* supra.

MARRIAGE—EFFECT OF PROHIBITION IN FOREIGN DIVORCE DECREE.—Plaintiff was divorced in Vermont where the statute (P. S. 3110, Vt.) provides that the libelee in a divorce proceeding shall not remarry within three years. Within the prohibited period she remarried in Missouri and now sues in Vermont upon a policy of insurance upon the life of her second husband. The policy contained a provision making it necessary for the plaintiff to be the lawful wife of the insured to maintain an action thereon. *Held,* that the plaintiff could recover. *Patterson's Admr.* v. *Modern Woodmen of America,* (Vt. 1915), 95 Atl. 692.

There is a wide division of opinion in the authorities as to whether a marriage when contracted under the above circumstances will be valid in the state where the divorce is granted. MINOR, CONFLICT OF LAWS, § 74. *Putnam* v. *Putnam,* 8 Pick. 433; *Inhabitants of West Cambridge* v. *Lexington,* 1 Pick 506; *Ponsford* v. *Johnson,* 2 Blatchford (U. S. C. C.) 51; *State* v. *Shattuck,* 69 Vt. 403; *State* v. *Richardson,* 72 Vt. 49; *Van Voorhis* v. *Brintnall,* 86 N. Y. 18; *Thorp* v. *Thorp,* 90 N. Y. 602; *Moore* v. *Hegeman* 92 N. Y. 521; *In Re Estate of Wood,* 137 Cal. 129, take the same view as the principal case. Of a contrary opinion are *Williams v. Oates,* 5 Iredell Law (N. C.) 535; *Pennegar & Haney* v. *State,* 87 Tenn. 244; *Lanham* v. *Lanham,* 136 Wis. 360; *Wilson* v. *Cook,* 256 Ill. 460; *Estate of Stull,* 183 Pa. St. 625; *McLennan* v. *McLennan,* 31 Ore. 480, 50 Pac. 802, 38 L. R. A. 863. The divergence of opinion is due to the interpretation of the statute. Those courts following the doctrine of the principal case consider that the prohibition of the statute is in the nature of a penalty. *State* v. *Shattuck, supra.* The courts reaching the opposite conclusion hold that the provision of the statute is a part of the public policy of the state. *Wilson* v. *Cook,* supra; 11 MICH. LAW REV., 406; 13 ID. 592.

MUNICIPAL CORPORATIONS—NEGLIGENCE IN CONSTRUCTION OF DITCH.—Defendant city constructed a ditch, which was a part of its drainage system, through the plaintiff's premises. In a time of heavy rainfall, the ditch was insufficient for the free passage of the water, which overflowed the banks of the ditch. The plaintiff alleged that he suffered damage by reason of the negligent construction of the ditch and a failure to repair the same after the city had notice of the defective condition. A demurrer was filed in which it was claimed that there was no duty to repair the ditch, that no negligence was shown in the construction, and that the injury complained of was outside the corporate limits and ultra vires. *Held,* that the demurrer was properly overruled and that the municipality, having authority under the CODE § 1303 to construct a ditch outside as well as within the corporate limits, was liable for its negligence in the construction and maintenance of the same. *City of Montgomery* v. *Stephens* (Ala. 1915), 69 So. 970.

There is a conflict in the cases as to the capacity in which a municipal corporation acts when constructing a sewer: It was held to be acting in its corporate or municipal capacity in *Murphy* v. *Indianapolis,* 158 Ind. 238, and in *Ostrander* v. *City of Lansing,* 111 Mich. 693; it was held to be acting in a governmental capacity in *Taggard* v. *Fall River,* 170 Mass. 325. The principal case does not pass upon the nature of the function which a municipality performs in the construction and maintenance of sewers. It is believed that the result would be the same in this case under either view of the function involved. However the principles applicable would be entirely different and unless a case discloses the view taken by the court, of the function involved viz.—whether governmental or municipal, the discussion is apt to be confusing. If the court considered the function governmental in its nature then the municipality shares the immunity of a sovereign state, in the absence of statute, and is liable only in case of a direct injury to property, either by a trespass or by maintaining a nuisance. *Hill* v. *Boston,* 122 Mass. 344; *Ashley* v. *Port Huron,* 35 Mich. 296; *Jacksonville* v. *Lambert,* 62 Ill. 519; *Vogt* v. *Grinnell,* 123 Ia. 332. A limitation to this rule is noted in *Alberts* v. *City of Muskegon,* 146 Mich. 210, 20 YALE L. J. 571; see also, 10 MICH LAW REV. 306. Under this rule it is useless for a court to discuss questions of negligence, either in the construction or the maintenance of a sewer, as the liability depends only on a direct injury to property. *Schwalk's Adm'r* v. *City of Louisville,* 135 Ky. 570, 122 S. W. 860. If the court decided that the function involved was municipal or corporate in its nature, then a distinction is noted in the cases holding the municipality liable for its negligence. In adopting a plan for improvements, the municipality is said to act in its discretionary or judicial capacity and is liable only for fraudulent or unreasonable action. *Lansing* v. *Toolan,* 37 Mich. 152; *City of Denver* v. *Kennedy,* 33 Colo. 80; *Hildeth* v. *City* of *Longmont,* 47 Colo. 79; *Johnson* v. *D. C.,* 118 U. S. 19. In the execution of the plan, the municipality is said to act ministerially and is liable for its negligence the same as any other legal individual. *Chicago* v. *Sehen,* 165 Ill. 371; *Johnson* v. *Chicago,* 258 Ill. 494; *Donahoe* v. *Kansas City,* 136 Mo. 657; *Johnson* v. *D. C.* supra. If the function involved in the principal case be considered governmental, then there is a liability for a direct injury to property; if the function be considered municipal, then there is a liability for negligence in the performance of a ministerial duty in the construction and maintenance of the sewer.

PERPETUITIES—CONDITIONS IN RESTRAINT OF ALIENATION.—Land had been conveyed to defendants in fee simple with a limitation that they were not to sell except to heirs of the grantor. Defendants resisted the foreclosure of a mortgage on this tract, contending that under their deed the execution of a mortgage to one not an heir of the grantor was void. *Held,* that the limitation in the deed was void as an unreasonable restraint on alienation. *Chappell* v. *Frick Co.,* (Ky. 1915) 179 S. W. 203.

Since the restraints imposed upon the alienation of land under the rules of feudal tenure were abolished in 1290 by the statute QUIA EMPTORES,